

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK : CIVIL TERM : PART 3

ALUM UNLIMITED, INC, as successor-in-interest
to ALM INTERNATIONAL, INC.,
Plaintiff

- against -

Index Number
603491/08

DONALD J. TRUMP

Defendant

60 Centre Street
New York, New York

December 14, 2011

B E F O R E :

HONORABLE EILEEN BRANSTEN, Justice

A P P E A R A N C E S :

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BY: ALEXIS ROBINSON, ESQ.

DENISE WILLIAMS, RPR
Official Court Reporter

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2 THE COURT: For ALM Unlimited I have the firm of
3 Itkowitz and Harwood, and I have Jay Itkowitz. Is that
4 correct?

5 MR. ITKOWITZ: Yes, Your Honor and Joanne --

6 MS. MCNAMARA: Joanne McNamara.

7 THE COURT: Then for Donald Trump I have Belkin,
8 Burden Wenig and Goldman, and I have Jeffrey Goldman.

9 MR. GOLDMAN: Yes.

10 THE COURT: Who is the lady?

11 MS. ROBINSON: Alexis Robinson.

12 THE COURT: Cards please.

13 So, we have Plaintiff's motion for summary
14 judgment and the cross motion by Defendant for summary
15 judgment. So and the summary judgment that the Defendant
16 is asking for is dismissing with prejudice the fifth cause
17 of action together with any other such further relief.

18 So with that, I will ask do we have cards?

19 MS. ROBINSON: I don't have a card with me.

20 THE COURT OFFICER: She will provide me with the
21 information.

22 THE COURT: I will ask Mr. Itkowitz.

23 MR. ITKOWITZ: Actually Ms. McNamara will be
24 doing the argument.

25 THE COURT: Excellent. How are you?

26 MS. MCNAMARA: Hi.

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2 Your Honor, Plaintiff's motion for summary
3 judgment should be granted for a variety of reasons. First
4 I should ask would you like any background on the agreement
5 between the parties?

6 THE COURT: You can do as you wish.

7 MS. MCNAMARA: Okay.

8 So ALM, the Plaintiff in this case, is a
9 licensing agent and in September, 2003, the parties entered
10 into an agreement which is undisputed whereby ALM would act
11 as the sole and exclusive licensing agent for Trump and
12 licensing the Trump name to its apparel. This agreement
13 was extended in January, 2004. Again its undisputed.

14 In August, 2004, the parties modified their prior
15 written agreements with respect to a licensee Phillips Van
16 Heusen or PVH whereby ALM would receive 10 percent of all
17 royalties or other fees received by Trump from PVH on any
18 deal that ALM brought to the table that subsequently turned
19 into a licensing deal between Trump and PVH and for any
20 subsequent renewals or extensions thereof.

21 The terms of this modification agreement were
22 outlined in several e-mails sent from ALM's Jeff Danzer to
23 Trump's agent, George Ross, the executive vice-president,
24 and Cathy Glosser, the Trump vice-president.

25 Its undisputed that Trump's agents received these
26 e-mails. They never sent any objection to these e-mails.

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2 Furthermore, after the consummation of the PVH
3 Trump licensing agreement in November, 2004, when ALM's
4 first fees became due on the first royalty statements,
5 Trump's agents sent to ALM royalty statements from PVH.
6 ALM, based on these royalty statements, sent invoices to
7 Trump for the 10 percent fee. Trump paid these invoices
8 for nearly three years.

9 This agreement, furthermore, is evidence by the
10 sworn deposition testimony of Trump's agent, Cathy Glosser,
11 and by Trump's own documentary evidence which proves the
12 existence of the deal.

13 On August 23rd, 2004, Trump has produced in
14 discovery the contemporaneous handwritten notes of Cathy
15 Glosser, again, undisputed by Defendant, which says that
16 "10 percent for ALM George made the deal with Jeff"
17 referring to ALM's Jeff Danzer."

18 Further, in 2005 when ALM's Jeff Danzer sent
19 e-mails to both Cathy Glosser and George Ross directing
20 where the first commission payment of 10 percent should be
21 sent, Cathy Glosser printed out this e-mail and wrote on
22 it, and again this handwriting is undisputed by Defendant,
23 "wait to hear from George before processing. George okayed
24 on July 20, 2005."

25 Its undisputed that the documentary evidence here
26 clearly shows that the parties entered into this

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2 modification agreement. The e-mails from jeff Danzer to
3 Trump show all of the terms of this Agreement. The
4 deposition testimony from Cathy Glosser proves this
5 agreement as does Trump's own documentary evidence.

6 THE COURT: One of the things the argument that
7 Defendant is making in opposition to you is that there's no
8 affidavit from Mr. Danzer.

9 MS. MCNAMARA: Jeff Danzer.

10 THE COURT: Right.

11 MS. MCNAMARA: An affidavit is not needed in this
12 case because our motion for summary judgment is based on
13 documentary evidence which is undisputed and is well
14 settled law in New York that summary judgment can be based
15 on an affidavit by someone with personal knowledge or by
16 documentary evidence in admissible form, which is clearly
17 what we have here.

18 THE COURT: So, you are saying that there's no
19 need for any kind of affidavit, although that's the main
20 argument against you?

21 MS. MCNAMARA: Exactly. There is no need for an
22 affidavit because the documentary evidence not just by
23 ALM's own documentary evidence, but Trump's own documentary
24 evidence and Trump's vice-president of licensing's sworn
25 deposition testimony that this was an agreement proves the
26 existence of the agreement.

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THE COURT: Okay.

So we get to the cross motion saying that it should be dismissed with prejudice.

Who am I going to hear from? I'm going to hear from Mr. Goldman?

MR. GOLDMAN: Yes, Your Honor.

May I address the motion before I address my cross motion?

THE COURT: Yes.

MR. GOLDMAN: Thank you.

The issue is on summary judgment whether they have laid bear proof to avoid a trial. At a trial Your Honor or a trial judge will get to hear testimony and determine credibility and the demeanor of witnesses.

THE COURT: What about the documentary evidence?

MR. GOLDMAN: Its a good point, and if they are relying on purely the documentary evidence, that is, we will argue, not in dispute and they are not --

THE COURT: So, therefore, you are agreeing that there is e-mails wherein Mr. Trump and his people agree that they are going to pay ALM 10 percent of whatever is made through this licensing agreement?

MR. GOLDMAN: No. And I will tell you why.

What they rely upon are e-mails from Mr. Danzer.

THE COURT: And checks too. Right?

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2 MR. GOLDMAN: Yes, and checks but let's work
3 through the progression of what they are relying upon.

4 They are relying upon an e-mail from Mr. Danzer
5 in August of 2004 to Mr. Ross that says this will confirm
6 our agreement. Mr. Danzer also sent an August 2, 2004,
7 e-mail three weeks before the August 23, 2004, e-mail. He
8 sent an August 2, 2004, e-mail saying to Mr. Ross this will
9 confirm our deal, please sign. Was not signed. The very
10 next day Mr. Danzer comes up with to Mr. Trump this will
11 confirm our deal with Mr. Trump. Please sign. Mr. Trump
12 does not sign. On August 23 another e-mail, this will
13 confirm our deal to Mr. Ross. Mr. Ross does not sign. And
14 Your Honor addressed some of these issues in Your Honor's
15 earlier decision on motion to dismiss.

16 What then happened was there was communications
17 between PVH and Trump and ultimately a deal was
18 consummated.

19 On a motion for summary judgment there are two
20 significant issues that the documents don't address that a
21 Danzer affidavit presumably would have addressed. Those
22 are two significant issues -- I should say there's more
23 than two: One was there acceptable license provision.

24 There is nothing in the e-mails that would
25 indicate in any way that this extension -- remember, this
26 was the extension of the existing agreement, as a matter of

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2 law waived the acceptable license agreement. They -- Mr.
3 Hager claims that it was, so Mr. Hager also has no personal
4 knowledge. There is nothing in any of the documents.

5 These e-mails were not PVH specific. The e-mails
6 reference any deal for any licensing agreement. So, all
7 this was at best was an extension of the existing agreement
8 that had the acceptable license requirement. Number one.

9 Number two, the existing agreement, and even Mr.
10 Hager concedes, albeit in his unverified complaint, there
11 is not even a verified pleading by Plaintiff, concedes that
12 in addition there has to be significant negotiations that
13 ALM is involved in on the material terms and conditions of
14 a new deal. There is nothing in this record that indicates
15 that ALM was involved whatsoever in those negotiations.
16 Mr. Hager concedes in paragraph 16 of his affidavit that
17 that's a requirement to earn a fee. If Your Honor looks at
18 the record they can report nothing to you where that is
19 indicated. What they do say is in their statement of
20 material facts they claim enough statement number six,
21 ALM --

22 THE COURT: Let me look at it. Do you have that
23 separate?

24 MR. GOLDMAN: No. I think its --

25 THE COURT: Its tab. From now on just so you
26 know always put your material facts separate. Go ahead.

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2 Five?

3 MR. GOLDMAN: Its on page two of -- its in
4 material statements -- material fact number six and this is
5 all they can hang their hat on is ALM, Trump and PVH
6 further negotiated and discussed material of terms. They
7 then reference our response to the Notice to Admit. Our
8 response to the Notice to Admit doesn't say that ALM, Trump
9 and PVH negotiated and discussed material terms. We only
10 admitted that Trump and PVH negotiated. That is a
11 significant --

12 THE COURT: You only admitted that Trump and?

13 MR. GOLDMAN: PVH negotiated and did consummate
14 the deal. But the prerequisite for them to earn a fee, and
15 I say it because its not only in the existing agreement,
16 but Mr. Hager acknowledges this in his affidavit, the
17 prerequisite is that ALM had to be involved in significant
18 negotiations over the material terms and conditions.

19 In our documents we indicate by affidavit and
20 documents that they were not involved. There is no
21 affidavit from Mr. Danzer that says I was involved. And in
22 fact, even in the reply affidavit when they attempt to say
23 in opposition to my cross motion but they do throw some
24 paragraphs in there that say, you know, I just want to say
25 that on the motion for summary judgment on the first cause
26 of action this is true or that's not true.

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2 Mr. Danzer is even silent in that affidavit as to
3 what if any involvement he had with any negotiations to
4 consummate the PVH deal. That is a factor that they have
5 to satisfy on summary judgment. They failed to satisfy it
6 by way of documents. They fail to satisfy it by way of
7 affidavit because Mr. Hager in his deposition testimony
8 admitted that he was not involved in it and has no idea.

9 So that's a significant hurdle that they have not
10 over come.

11 Now let's talk about -- I think Counsel
12 referenced which would have been I believe their Exhibit 9,
13 an August 23, 2004, notation that Ms. Glosser wrote and
14 that is Exhibit 9 to their papers. All that is is a note
15 that Ms. Glosser took indicating that this is what Jeff
16 Danzer told her. That is not any recognition that that was
17 what the deal was.

18 THE COURT: What about the e-mail at tab eight
19 from Jeff Danzer to Cathy Glosser dated 8-23-04 at
20 11:01 a.m. "Hi, Cathy. I hope you had a nice weekend. I
21 spoke with George on Friday and we came to terms on our
22 agreement. ALM will receive 10 percent of the royalties
23 earned by the Trump Organization on any deal we bring to
24 the table. That said, I have spoken to Phillips Van Heusen
25 regarding getting Donald up to see them this week. PVH is
26 interested in licensing the Trump brand for dress shirts

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2 and neckties. George said that either Wednesday or
3 Thursday would work and I have passed that message on to
4 PVH. In the meantime I would like to get our deal on
5 paper. Do you want me to send you a letter signature or do
6 you want to send me a letter. Its your call. I hope all
7 is getting great with you and I look forward to hearing
8 back from you soon." So?

9 MR. GOLDMAN: Okay. Yes. That is the alleged,
10 you know, letter from Mr. Danzer which Your Honor in Your
11 Honor's earlier decision when they were relying upon these
12 e-mails Your Honor noted that all of these are just really
13 one-sided e-mails from Mr. Danzer. You're right, and Mr.
14 Ross has testified at his deposition that when he got what
15 he denominated them as poison pen letters that he called
16 Jeff Danzer -- now this was in our papers, and it was at
17 the deposition. He called Jeff Danzer every time and said,
18 look, we don't have a deal on this 10 percent forever.
19 You'll get something. Let's get the deal done, then we
20 will figure out what it is. No one is not, you know, no
21 one is disputing that, but if I may, Your Honor, and I
22 don't mean to interrupt Your Honor but there is nothing
23 that rebuts that in the record.

24 THE COURT: Yes, there is.

25 MR. GOLDMAN: What was that, Your Honor?

26 THE COURT: Checks and invoices.

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2 MR. GOLDMAN: Clearly for -- let's talk about the
3 checks and invoices over the two and a half years.

4 Once -- that all began in 2005. Once that
5 process began it became a self-motivating process. There
6 was no further involvement of George Ross and certainly if
7 Mr. Trump is signing thousands of checks a week --

8 THE COURT: Give me a break. One thing I know
9 that I have had Mr. Trump on a number of different other
10 cases, but let me tell you something, Mr. Trump never has
11 appeared to this Court to be anything but a very careful
12 business person. He doesn't willy nilly sign checks to
13 anyone that for anything that he does not know about and
14 that he doesn't actually vent out.

15 MR. GOLDMAN: Can I tell you something, Your
16 Honor. I don't know what perception you are utilizing for
17 Mr. Trump but if that's a perception or a persona that Your
18 Honor is taking from what you see of him, I will tell you
19 I've been there when the stack of checks are this high and
20 the invoices -- the checks because of these stubs cover
21 every invoice and while we are communicating he is signing
22 checks.

23 So, for Your Honor to say that he knows what he's
24 signing every time, I am just telling you I have been there
25 when he has signed hundreds and hundreds of checks.

26 THE COURT: Then his people who wrote out the

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2 checks and who looked over the invoices and who presented
3 the check for Donald Trump to sign knew what the deal was.

4 Excuse me a second.

5 (Whereupon, there was a pause in the
6 proceedings.)

7 THE COURT: So, you're telling me that if you're
8 telling me that Mr. Trump, in his business like manner,
9 that he signs any old check that's put in front of him,
10 surely he relies, because of that big stack, on the very
11 competent staff that he has hired and has reviewed
12 everything and has said this 10 percent is based on
13 something.

14 MR. GOLDMAN: I'm not going to stand here and say
15 he doesn't rely upon his staff. It would be silly of me to
16 argue that, and clearly at the first time that it was
17 processed we concede that there was a miscommunication
18 between Ms. Glosser and Mr. Ross. Once that first -- and
19 the record shows once that first step occurred where
20 10 percent of the royalty approved it then became -- once
21 it was coded that happened quarterly there was no longer
22 let me check with or double check --

23 THE COURT: Wait a second. There's another step
24 there that we are forgetting. We are forgetting that in
25 order for ALM to send an invoice in for 10 percent of the
26 amount of money, there had to be the step of Trump sending

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2 to ALM how much money was --

3 MR. GOLDMAN: The royalty statements.

4 THE COURT: Yes, the royalty, how much money was
5 taken in and so therefore ALM then sent back an invoice, I
6 think its very cumbersome the way they did it, but Trump
7 goes to ALM says he made \$100,000 this year, this last four
8 months. Wouldn't that be nice. Anyway they did that. And
9 then ALM sends back to Trump, well, if you made a hundred
10 we are entitled to 10,000 then somebody reviews that
11 because let me tell you each and every one of these things
12 are reviewed and it has to be. You cannot tell me that
13 once you get into the groove of it we just sign any old
14 checks because its 10 percent. No, sir. That makes no
15 logical sense. That's not the business way of doing
16 things, and what really makes a problem is that if indeed
17 Trump sends to ALM the amount of money that they made, ALM
18 sends an invoice for 10 percent, then a check is cut, then
19 its presented to Mr. Trump, who never pays any attention to
20 what he signs, and he signs it. But somebody behind that
21 looked over how much money they said to ALM was made from
22 the PH -- what's it called.

23 MR. GOLDMAN: PVH.

24 THE COURT: PVH's license. Then the next step
25 was ALM returned the favor and said I'm really owed
26 10 percent of that amount. Then somebody looked at those

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2 two figures and came to the conclusion, yeah, that's good
3 and here's the check. It can't be done any other way.

4 MR. GOLDMAN: Your Honor, I'm not standing here
5 telling you that that's not how it was processed.

6 The question is whether or not there was -- what
7 was the terms of that. Was it 10 percent forever? Was it
8 10 percent regardless of what they did? We are not coming
9 to court asking for a return of what's already been paid.
10 The question is whether or not they are entitled to it in
11 perpetuity and there's nothing in the record --

12 THE COURT: But there's nothing in the record to
13 say that it wasn't.

14 MR. GOLDMAN: No, but they have to prove that it
15 was, and there's nothing in the record, in the record. Its
16 their burden on summary judgment. There's nothing in the
17 record that says that it was. If they want it in
18 perpetuity they have to prove that that was a modification,
19 and Your Honor has already ruled that this partial
20 performance doctrine doesn't apply in this case.

21 So, I'm assuming that the processing of checks is
22 not considered a partial performance, but the fact that the
23 checks were processed may preclude us from recovering but
24 it doesn't create a right in perpetuity for them,
25 especially where they -- I should say them, where ALM
26 acknowledges that a prerequisite was for them to be

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2 involved in significant negotiations and they weren't.
3 They just brought them together. I'd would like you to
4 meet somebody. That's all that happened here. That's all.
5 That's all the record shows happened here and they are
6 seeking 10 percent forever on every renewal, whether its 15
7 years or 20 years and I don't think there is anything in
8 the record, Your Honor, where they can say that that is
9 what the deal --

10 THE COURT: Let me talk on that.

11 What's your answer to that? Where is your
12 forever in perpetuity issue?

13 MS. MCNAMARA: The e-mails that state the terms
14 of the deal --

15 THE COURT: Don't tell me about e-mails. Show me
16 exactly the language.

17 MS. MCNAMARA: If Your Honor will turn to Exhibit
18 10, for example, of Plaintiff's moving paragraphs.

19 THE COURT: "Dear George," from Jeff Danzer to
20 George Ross dated August 23rd, 2004, at 3:22 p.m.

21 MS. MCNAMARA: Correct.

22 THE COURT: And CC Mark Hager. Who is your
23 person. "Dear George, I'm happy to have been able to come
24 to terms regarding our deal as it pertains to bringing
25 licensing deals to the Trump Organizations. As we've
26 agreed, ALM's fee for any introduction of a potential

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2 licensing partner to Donald Trump and or any other entity
3 associated with Donald Trump which evolves into a licensing
4 deal and any subsequent renewal any subsequent renewal of
5 thereof shall be 10 percent of the royalties or such other
6 fees i.e. advances, sign-on bonuses, marketing fees paid to
7 Trump. ALM's fee shall be paid to ALM or any other entity
8 it so chooses within 15 days from when Trump receives
9 payment of the licensing partner. George, this project is
10 both challenging and exciting and I'm confident that
11 together we can build one of the most successful consumer
12 product brands in the world."

13 Okay. What does George say?

14 MS. MCNAMARA: So --

15 THE COURT: What did George say?

16 MS. MCNAMARA: Your Honor --

17 THE COURT: Where is George?

18 MS. MCNAMARA: First of all, aside from the
19 documentary evidence that you can see at Exhibit 16 --

20 THE COURT: No, sir -- no. We have August 23rd.
21 Then the next one is again from Jeff Danzer who -- by the
22 way, why not have an affidavit from him? Where is he?

23 MS. MCNAMARA: Because, Your Honor, the
24 documentary evidence --

25 THE COURT: Ma'am, you are not doing it right
26 now. You are not doing it, because the next e-mail -- all

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2 right so we have Jeff saying to George here is the deal.
3 Okay, and then wouldn't you expect to have a consummated
4 contract, George saying you're right, we are signing on the
5 bottom line. Let's get going on this. Its a wonderful
6 deal. Trump is going to be known throughout the whole wide
7 world for his ties and neckties and shirts. Right? That's
8 what you expect as an answer.

9 MS. MCNAMARA: You would hope so, Your Honor, but
10 Counsel's statement that ALM had nothing to do with this is
11 completely at odds with the George Ross deposition
12 testimony where he states, and if I could turn your
13 attention --

14 THE COURT: I want Mr. Danzer's testimony. Is
15 there anything from Mr. Danzer?

16 MS. MCNAMARA: Well, he did set the record
17 straight in his affidavit which was in opposition to his
18 cross motion, but, Your Honor, the documentary evidence
19 conclusively shows without a Danzer affidavit that this was
20 the agreement. Trump accepted the benefit of ALM's
21 introduction.

22 THE COURT: No. No. No, Ms. McNamara. No. She
23 is the one talking to me. She can handle it. Totally
24 perfectly.

25 MR. ITKOWITZ: Okay.

26 THE COURT: My question to you is that my

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2 contracts one on one said to me -- I had Professor Calamari
3 and the Hornbook and in order to get a contract you make an
4 offer and there's an acceptance. That's the contract.

5 MS. MCNAMARA: And Trump's acceptance of the
6 benefit ALM brought to the deal here is clear acceptance.

7 Your Honor, that is clear contract law that if a
8 party puts forth the terms of an agreement and the
9 receiving party does not dispute the terms of that
10 agreement and moreover accepts the benefit of that
11 agreement they have accepted the terms.

12 THE COURT: Well, that's a nice idea but where
13 you get the perpetuity from that? If indeed they went
14 ahead and paid you for the two and half years, you must
15 every day that you got the 10 percent said halleluiah. Its
16 all going well.

17 MS. MCNAMARA: Your Honor, if I may its not
18 perpetuity. Its for every subsequent renewal thereof.

19 THE COURT: But there's never been a renewal
20 since the first contract has never been written. No one
21 ever signed a contract.

22 MS. MCNAMARA: I'm sorry. I think there is a
23 misunderstanding here. On any subsequent renewal here of
24 the licensing deal Trump entered into a licensing deal with
25 PVH in --

26 THE COURT: I have to say to you, Ms. McNamara I

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2 don't see it. Where is the licensing deal? We went
3 through that already. Its not as though we haven't talked
4 about this.

5 In my decision tab 26 my decision of May 19, 2010
6 where basically a lot of this was already talked about, I
7 didn't find that indeed performance -- I didn't find for
8 you.

9 MS. MCNAMARA: If I may the licensing agreement
10 that that refers to is the licensing agreement that was
11 entered into between PVH and Trump, a copy of which is
12 attached as Exhibit 14 to our moving papers.

13 ALM introduced Trump and PVH brought together a
14 licensing deal which is attached as Exhibit 14. This is
15 the licensing agreement between Trump and PVH and ALM is
16 entitled to its fee for any subsequent renewal of the Trump
17 PVH agreement which, by the way, is still in effect today.

18 MR. GOLDMAN: To answer your question --

19 MS. MCNAMARA: Furthermore, Your Honor, I would
20 like to point out, I would like to draw your attention to
21 the Ross deposition testimony, Exhibit 2. If I could
22 direct your attention to line 116. This does only clearly
23 shows that ALM was integral in bringing this deal together
24 but --

25 THE COURT: What page?

26 MS. MCNAMARA: Page 116.

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THE COURT: I have like ten pages here.

MS. MCNAMARA: Ross admitted in his deposition that the reason he didn't send any disagreement to ALM if you go to lines 14 through 19, "I didn't want to put it in writing for the expressed purpose later on that it might have created a situation where he," referring to ALM, "would kill the PVH deal and I thought he was devious enough to do that."

THE COURT: Are you sure you are not talking about Trump? Sorry. I mean, I'm not sure what he is saying.

MS. MCNAMARA: This is the deposition --

MR. GOLDMAN: Can we leave what our particular feelings about Mr. Trump.

MS. MCNAMARA: Excuse me --

THE COURT: No. What I'm saying is here is the question. We go back to 115. Did it occur to you that you should write something to him in e-mail or letter saying -- let me finish the question. "Did it occur to you that you should write him a note whether it be an e-mail, letter stating you know what you're not entitled to the 10 percent?"

"Answer: -- this is answer from George. George. Mr. Ross who works for Mr. Trump. Right?

MS. MCNAMARA: Yes.

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2 THE COURT: The answer is, "there is no question
3 in my mind that if I wrote that type of letter he had the
4 ability to kill or he indicated to me" -- I don't know who
5 "he" is. Who is he?

6 MS. MCNAMARA: Mr. Danzer, ALM's Jeff Danzer.

7 THE COURT: So he, Mr. Danzer, who we don't have
8 an affidavit from.

9 MS. MCNAMARA: This is referring --

10 THE COURT: So he Mr. Danzer had the ability to
11 kill or he indicated to me that he could kill the PVH deal
12 and therefore I didn't want to kill the PVH deal because it
13 was a good deal and I thought it ought to be made. As to
14 how much he's going, he, Mr. Danzer, right, going to get
15 paid that's different. So rather than entering into
16 e-mails back and forth saying yes, yes, sending self-
17 serving e-mails every time I got one I spoke to him. He,
18 Mr. Danzer, asked me to sign and I refused and I told him
19 why. I said to Jeff, okay -- now we know its Mr. Danzer, I
20 said to Jeff, I'm not going to sign it at that point.
21 We'll work out a deal later on. But I'm not paying you
22 10 percent. Then he wrote me another one and the same
23 thing, no, I'm not saying to you the 10 percent. I didn't
24 want to put it in writing for the expressed purpose of
25 later on that it might have created a situation that he,
26 Mr. Danzer, Jeff, would kill the PVH deal and I thought he

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2 was devious enough to do it. Mr. Jeff was devious enough.

3 MS. MCNAMARA: So, what we have here is George
4 Ross's refusal to put any disagreement in writing because
5 he knew ALM --

6 THE COURT: Tell me where under the scheme of any
7 case law you think you got a deal on that. Tell me. I
8 mean, maybe we can rewrite Mr. Calamari's, Professor
9 Calamari's hornbook.

10 MS. MCNAMARA: Sure. Your Honor, the case of
11 Brennan v. National Equities Investment Co., 247 NY 486
12 says --

13 THE COURT: Is that in your memo?

14 MS. MCNAMARA: Yes. Where conduct accompanied by
15 silence would be deceptive and beguiling.

16 THE COURT: What?

17 MS. MCNAMARA: A party has accepted as a matter
18 of law. Here George Ross's conduct --

19 THE COURT: He has not accepted anything. He
20 said, look, I want to go ahead and get the benefit of the
21 deal but I'm not paying you 10 percent. I'm not --
22 10 percent is out the question. Where do you get the deal?

23 MS. MCNAMARA: Because ALM continued to send
24 e-mails saying these are the terms. It is based upon these
25 terms that we are continuing to work with you. Trump and
26 his agents had the understanding. They knew that ALM was

1
2 working on --

3 THE COURT: You try to convince a jury on this.
4 You're not getting summary judgment on this because I do
5 not see that there is a contract between you and Trump. I
6 don't see it and we have been through this before.

7 MS. MCNAMARA: Your Honor, this deposition
8 testimony that I just pointed out estops George Ross from
9 denying the agreement because he explicitly said he refused
10 from sending any disagreement in order to get the benefit
11 of the deal.

12 In this situation where a party allows the
13 sending party to continue to operate under the belief that
14 they are working on these terms of a deal this they are --

15 THE COURT: Mr. Danzer can do what he wants. Mr.
16 Danzer is absolutely free to get up in the morning and say
17 I haven't got anything in the writing but I'm going to go
18 ahead with this deal and see how it works out. Maybe later
19 on we can have a deal. Maybe later on we can have a
20 writing and maybe it will be 10 percent. Maybe it will be
21 more. But who knows, who knows, but you cannot rely -- you
22 can say to me that you had partial performance because
23 during a certain period of time somebody at Trump
24 Organization sent the invoice over to ALM, ALM sent it back
25 and by golly Mr. Trump took a little stack of among the
26 stack of checks that he signed that day he signed yours.

1
2 Good. But you can't -- you're asking this Court to do is
3 to infer from the language here that indeed this would be
4 forever and what the other side is saying to me is that
5 well, all right, we did have a licensing agreement, Trump
6 and PVH, we got into a licensing agreement but where ALM is
7 something else.

8 The little bit I know about royalties I can
9 assure you that in the book business and in the movie
10 business and in the music business and anything that really
11 deals constantly with royalties and I'm owed X amount of
12 money on the receipts, those are not just simple, little
13 contracts. Those are rather hefty, well negotiated
14 contracts and they are very vague detail in what causes
15 what events have to occur in order for the person who
16 created this wonderful work of art that the author is
17 trying to get royalties on, how they go about getting it.
18 All is dependent on the contract.

19 MS. MCNAMARA: Right. Again licensing contract
20 exists between Trump and PVH.

21 THE COURT: But there is no ALM. In every one of
22 the licensing agreements that I know of that involved an
23 author and there is an agreement between the -- forget the
24 author. The author is out of it, but between the movie,
25 the people and the owners of the royalties the owners of
26 the actual property, the people who create the book or

1
2 whatever they mention in there that so and so's the author
3 of it is going to get X amount of the royalties of the
4 production and etcetera, etcetera, and they are named and
5 wherein here is it named in this contract? Where does
6 Mr. Trump say that ALM will get 10 percent?

7 MS. MCNAMARA: Your Honor, this also completely
8 discounts the testimony of Cathy Glosser, the
9 vice-president of licensing --

10 THE COURT: Show me.

11 MS. MCNAMARA: -- has the authority to act. This
12 is Exhibit 1 to our moving papers. Turn to page 73.

13 THE COURT: Exhibit 1.

14 MS. MCNAMARA: I suppose we should start at 72 so
15 you can get the context of who they are talking about.
16 Page 72 line sixteen, "tell me how it came about that Mr.
17 Ross told you," and this is Cathy Glosser her deposition,
18 "that ALM was entitled to pay to be paid." She goes on to
19 say at some point in 2004 --

20 THE COURT: Answer, I met him in his office, and,
21 question, when. At some point in 2004 and asked him once
22 again if he had an agreement in place with ALM and if so if
23 I could have a copy of it, meaning a writing. Right. You
24 get a copy of a writing. And at that point after asking a
25 number of times he told me it didn't matter, not to worry
26 about it and to see to it that ALM got paid. Well, that's

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2 between Mr. Ross and Cathy Glosser.

3 MS. MCNAMARA: Right.

4 THE COURT: And Mr. Goldman says 2004, 2005 and
5 the witness, I don't recall the exact date. I don't recall
6 the exact date. And Mr. Itkowitz goes on, and he told you
7 that ALM should get.

8 "Answer: I guess it couldn't have been 2004
9 because I don't think this was a product in 2004.

10 "Question: All right. And he told you that ALM
11 should get 10 percent of the royalties with such other fees
12 paid to Trump?

13 "Answer: Yes. At that time I'll show you in
14 what's marked Exhibit 7 for Identification. Do you recall
15 receiving a copy of this e-mail?

16 MS. MCNAMARA: Your Honor, that is an admission
17 by Cathy Glosser Trump's vice-president of licensing of
18 what George Ross told her and he told you that ALM should
19 get 10 percent of all royalties, yes.

20 THE COURT: You know what, but you haven't got a
21 contract. So Mr. Ross could tell and Ms. Glosser pay away.
22 Give them the 10 percent. Make them happy. Make them
23 happy. But one day when somebody turns around and says you
24 know why should we make ALM happy again. Where is that
25 contract. Let me see that contract. And then you're up
26 the creek because you don't have a contract.

1
2 MS. MCNAMARA: Exactly. In the case of John
3 William Costello Associates verses Standard Metals
4 Corporation --

5 THE COURT: You got a copy of the decision?

6 MS. MCNAMARA: This is located 1999 AD 2d 227.

7 THE COURT: I haven't had an opportunity -- I
8 don't see it in your table of authorities. Is this
9 something you relied on?

10 MS. MCNAMARA: Yes its in our table of
11 authorities.

12 THE COURT: Where is it.

13 MS. MCNAMARA: John William Costello.

14 THE COURT: Where?

15 MS. MCNAMARA: We reference it on page 16 of our
16 moving papers.

17 THE COURT: I'm looking at your memorandum of
18 law. I don't see it.

19 Is this not your memorandum of law? Plaintiff's
20 memorandum of law of further support. I don't have it.
21 Maybe I'm missing something.

22 MS. MCNAMARA: You are missing our moving papers?

23 THE COURT: No. But I don't have your memorandum
24 of law. Are you referring to your memorandum of law or are
25 you referring to a memo law?

26 MS. MCNAMARA: No. This was a memorandum of law.

1
2 THE COURT: I have a memorandum of law that says
3 Plaintiff's memorandum of law. Is that what you are
4 referring to?

5 MS. MCNAMARA: Yes.

6 THE COURT: Then I'm looking for what is the
7 name?

8 MS. MCNAMARA: Page 16, Your Honor.

9 THE COURT: As far as I can tell you -- give her
10 page 16.

11 MS. MCNAMARA: This is our reply memorandum of
12 law.

13 THE COURT: I don't know if I saw any other
14 memorandum of law. It doesn't say reply.

15 MS. MCNAMARA: Your Honor, I can give you my
16 copy.

17 MR. ITKOWITZ: I have another copy here.

18 THE COURT: Show it to Counsel.

19 MR. GOLDMAN: Its fine, Your Honor. I have seen
20 it and I addressed it and I am prepared to address the
21 case.

22 THE COURT: Let me see if its this. Oh. Okay.
23 I do have it. What is the name of the case?

24 MS. MCNAMARA: John William Costello Associates.

25 THE COURT: I see it, except its page 20 and 21.
26 That's what's referred to.

1
2 MS. MCNAMARA: Your Honor, when an offering party
3 sends the terms of a deal and the receiving party
4 indisputably accepts the benefits of that deal, the
5 receiving party has by conduct accepted the deal terms.

6 What happened in this case is this involved a
7 very similar situation. It was an agent working on behalf
8 of an employee and was negotiating the terms and sent
9 letters to the corporation outlining his fee and what he
10 was to be paid. The corporation did not send any written
11 disagreement, ultimately hired that employee and the Court
12 granted summary judgment there stating that the agent of
13 the employee was entitled to be paid for bringing the
14 parties together, putting aside any factual issue to
15 whether the parties reached an oral agreement because there
16 in that case the employer did the same thing that Trump was
17 doing here and said, well, I received that letter with the
18 terms of the deal and I called and we disputed it. We
19 didn't come to an agreement.

20 But despite their empathetic statements under
21 oath that the terms were not agreed to, the Court granted
22 summary judgment based on the fact that the Defendants
23 there were aware of the letter, aware of the terms, had
24 received them, and accepted the benefit of the Plaintiff's
25 services, and here that's what we have here. Trump is
26 aware of the terms --

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2 THE COURT: But the problem that you have and the
3 reason why a contract is and indeed even if you rely on the
4 fact that he paid you the 10 percent for two and a half
5 years, which is even better, its more evidence in your
6 favor.

7 MS. MCNAMARA: Right.

8 THE COURT: Nevertheless, in order for you to
9 continue to get this, its a question of continuation. Its
10 a question what right do you have to continue -- let's put
11 it another way. What have you done lately for Trump?

12 MS. MCNAMARA: The terms were clearly stated for
13 any subsequent renewal thereof.

14 What ALM did for Trump was brought him a great
15 deal so great that Trump entered into the licensing
16 agreement with PVH in 2004 and has continued to
17 subsequently renew it.

18 THE COURT: All right. Let me her from the other
19 side.

20 MR. GOLDMAN: Very briefly on that point.
21 There's no dispute that Mr. Danzer sent the August 23
22 letter. There is a sworn statement from Mr. Ross that he
23 called Danzer and said no deal. There's another document
24 from Mr. Danzer to Mr. Ross saying I spoke to you which
25 confirms Mr. Ross's sworn testimony that he did speak with
26 him and again asked him to sign something. Mr. Ross says

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2 I'm not signing something, we will figure it out as we go
3 along but I'm not signing something. Mr. Danzer had every
4 right at that point to say either no deal or something
5 else. They operated that way and there's nothing in the
6 record that indicates any contradiction to Mr. Ross's
7 testimony because Mr. Danzer never put in an affidavit.
8 They have very good counsel. They know Mr. Danzer was the
9 point person in this deal and to not put in an affidavit on
10 their moving papers on these critical terms of renewal, Mr.
11 Ross's sworn deposition testimony that they knew about
12 before they made the motion for summary judgment, not to
13 put those an affidavit in is I think telling and there's
14 nothing in the record that they were involved in
15 significant negotiations. There is nothing in the record
16 that shows that this is for every renewal other than a
17 letter that Mr. Danzer wrote that Mr. Ross had sworn that
18 said that's not our deal and after that communication Mr.
19 Danzer wrote another letter asking him to sign something
20 that Mr. Ross admits that he didn't because he thought that
21 Mr. Danzer was devious enough to blow up the deal and he
22 didn't want to blow it up.

23 I'm going to move on to my cross motion on the
24 fifth cause of action.

25 THE COURT: Okay.

26 MR. GOLDMAN: The fifth cause of action Your

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2 Honor has already ruled that it was not an exclusive right
3 to sell and Your Honor limited the two issues on the fifth
4 cause of action which involved a motion to dismiss, and the
5 standard is a little different on motion to dismiss. The
6 two issues that the Court addressed was whether or not
7 Plaintiff made a demand of Trump for information regarding
8 potential licensees, and the second issue was whether or
9 not Trump used a broker Bo Dietl. The other issue, Your
10 Honor, limited it to whether or not Trump used another
11 broker named Bo Dietl to procure what was the Marcraft
12 Deal.

13 There's been extensive discovery since the motion
14 to dismiss. Plaintiff's Counsel subpoenaed Marcraft for
15 all of their records concerning the deal. Mr. Hager admits
16 in his deposition that he never asked for a list of
17 potential licensees. Mr. Hager in his papers and in his
18 deposition never says that he asked for something that
19 Trump did not provide. All he -- all they can say is -- in
20 fact they don't say anything because what Your Honor has
21 before Your Honor is I believe its Exhibit G or Exhibit H
22 to our papers which were letters of introduction that's
23 Exhibit H, that would be letters of introduction that Mr.
24 Danzer had asked of Trump to provide to Mr. Danzer in
25 furtherance of his performing under the original license
26 agreement.

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2 There is nothing in the record, nothing from
3 discovery, that would indicate in any way that any request
4 was made for potential licensees which was not provided.
5 There is no need for a trial on that issue because there is
6 absolutely no evidence of it.

7 In opposition to our cross motion Mr. Danzer
8 appears. What does Mr. Danzer say. Can he refer to an
9 e-mail that indicated he ever asked for anything? No. Can
10 he refer to a letter in which he ever asks for anything,
11 no, and in fact Mr. Danzer is very good at communicating.
12 This record is replete with e-mails, whether we believe
13 they are self-serving, I want to confirm this, I want to
14 confirm that, but there's no e-mails where he has ever
15 asked for this information and certainly no e-mails or
16 letters where he's ever indicated that the Trump never
17 provided or denied him access to that information. All
18 that they rely upon is a June 8, 2004, letter and when Your
19 Honor reads the June 8, 2004, letter Your Honor will see
20 that that letter is nothing more than Mr. Danzer writing to
21 Mr. Ross upset that we had not provided him information
22 because Mr. Danzer believed he had an exclusive right to
23 sell and therefore anything that Trump -- any person or
24 lead Trump had Mr. Danzer believed he was entitled to
25 because he had an exclusive right to sell.

26 This Court has already found that Mr. Ross's

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2 position to Mr. Danzer which was you don't have an
3 exclusive right to sell, was an accurate position. Mr.
4 Danzer in his affidavit says Mr. Ross became irate and
5 angry and said I'm never going to provide you the
6 information. Mr. Danzer doesn't indicate a date when that
7 occurred, when that occurred, why that occurred. Mr. Ross
8 acknowledges in his responding affidavit, yes, I got angry,
9 I got angry because Jeff Danzer kept on saying he had an
10 exclusive right to sell and we didn't think he did, and the
11 Court has actually found that they didn't.

12 The second issue is whether or not Trump used Bo
13 Dietl as a broker to procure the Marcraft, because the
14 Court found if he used a broker then ALM would be entitled
15 to a fee. Again extensive discovery. There's an affidavit
16 from Mr. Brody, principal of Market Craft, that there was
17 no broker. There is an affidavit from Mr. Trump that there
18 was no broker. There is sworn deposition testimony from
19 Mr. Glosser that there's never been any commission or
20 compensation paid to Mr. Bo Dietl. There is nothing in the
21 record that would indicate that there was ever a broker
22 used.

23 As Mr. Trump testified at his deposition, Bo
24 Dietl was a friend of Mr. Brody and he's friend of
25 Mr. Trump. He knew that they were interested in doing
26 licensing. He brought them together. That's all they did.

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2 It was a friend bringing two people together. There is
3 nothing nothing in the record that would warrant a trial on
4 this issue and we have gone through discovery and all they
5 put on that one issue in response is just conjecture and
6 surmise. They cannot rely upon anything, notwithstanding
7 again extensive discovery that would require a trial on
8 either issue, either that we used a broker or that they
9 ever asked for anything that we said no to and I hope they
10 will stand up and point in the record where they have asked
11 for access and we said no, where there's one letter where
12 they have asked for something where we said no.

13 Thank you.

14 THE COURT: All right. Ms. McNamara.

15 MS. MCNAMARA: Your Honor, first of all, Counsel
16 slightly misstates the issue in that this is not about
17 whether ALM had the sole and exclusive right to act as a
18 broker.

19 THE COURT: Let's go to the complaint. Let's see
20 exactly what the language is.

21 MS. MCNAMARA: If I may, Your Honor, you already
22 ruled precisely on this issue in your May 19 decision.

23 THE COURT: I know but let me look at the
24 complaint. Where is it.

25 MS. MCNAMARA: Our complaint is at Exhibit --

26 THE COURT: Show me.

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2 MR. GOLDMAN: Its 23, Your Honor, Exhibit 23 is
3 their complaint. And the fifth cause of action begins at
4 the bottom of page 25.

5 THE COURT: So my decision show me the page where
6 I decided that.

7 MS. MCNAMARA: On page 20 of your decision, Your
8 Honor, sentence begins on page 19 the relevant part is on
9 page 20. Your Honor wrote that either Trump's refusal to
10 provide the requested information or the involvement of
11 another broker would consist of a breach of contract, and
12 what ALM alleges here is that Jeff Danzer did request
13 information regarding other licensees that were --

14 THE COURT: But, Counsel just said to me show me.
15 Remember I asked Counsel to get up and show me the e-mail
16 that he asked something. Show me the letter that he sent.

17 MS. MCNAMARA: Your Honor, he was not required to
18 make his requests in writing. There is nothing that's
19 stated that --

20 THE COURT: Show me the affidavit where he states
21 that.

22 MS. MCNAMARA: If you turn to the affidavit of
23 Jeff Danzer that's attached to our reply papers.

24 THE COURT: Okay. I got -- that's your reply.
25 Mr. Goldman's reply. All right. I don't see the papers.
26 I have -- its part of rule 19. You really do have to

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2 separate out from now on because it gets me terribly
3 confused.

4 So I have Jeff Danzer's affidavit. Let me see if
5 its signed. Oh, yes. Mr. Danzer signs on an unpaginated
6 page that could be signature to anything in the whole wide
7 world. I hereby sign by affidavit to anything that you
8 want to say ahead. That is unacceptable. I won't even
9 read it because it is not an affidavit that is under the
10 law something I can deal with because an affidavit is a
11 signed -- a swearing to whatever was said before.

12 If you said, for example, this is page 18 of an
13 18 page affidavit, I would accept it. If you said to me
14 the Danzer affidavit is unpaginated everywhere but this
15 is -- it doesn't even have the last known thing to be said
16 is paragraph 22 and then comes a single page where Mr.
17 Danzer gets up in the morning and he signs an affidavit but
18 it could be an affidavit saying I have two children and
19 that's my affidavit. I have no idea what this is for.

20 MS. MCNAMARA: Your Honor, none of these are
21 pages in his affidavit are paginated --

22 THE COURT: No, but don't you understand the
23 problem. If I swear to something I swear that I have told
24 the truth and everything I say in here is sworn to as an
25 affidavit that the Court should rely on and you have a
26 single page that has no reference whatsoever to anything

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2 else, then you are sworn to zero because you have sworn to
3 an empty event.

4 MR. ITKOWITZ: Your Honor --

5 THE COURT: No, sir. I don't accept affidavits
6 along those lines.

7 MR. ITKOWITZ: May I address that issue, Your
8 Honor.

9 THE COURT: You may, but I'm telling you I'm not
10 accepting it.

11 MR. ITKOWITZ: Your Honor, I and Ms. McNamara are
12 officers of this court and we, okay, are submitting an
13 affidavit that was signed by our client, okay, and he is
14 swearing to the contents of this affidavit. Now if you're
15 saying that that -- if you're calling into question the
16 voracity of that of what my office --

17 THE COURT: I'm --

18 MR. ITKOWITZ: I understand. He got an -- the
19 affidavit -- I've been practicing for 30 years -- 35 years.

20 THE COURT: Then you should know better.

21 MR. ITKOWITZ: I've never had -- I've never heard
22 that there is a requirement for an affidavit to be accepted
23 that the pages have to be numbered. Sometimes they are
24 numbered --

25 THE COURT: No, sir, but the issue is not
26 numbering. The issue is that Mr. Danzer got up in the

1
2 morning and signed a blank piece of paper that doesn't
3 refer to anything else that I'm swearing to on a affidavit.
4 If you are saying, I as an officer of the court, although
5 by the way its not your jurat, the only person that counts
6 here is this woman by the name Dinnath and the last name is
7 Gangapersad whose qualified in Queens county and whose
8 commission expires on the 2-8 of 2015 2011.

9 MR. ITKOWITZ: As an officer of the court I can
10 attest to this Court that we transmitted this complete
11 affidavit to my client and that he returned it signed in
12 the way that it is and that's what we have submitted to the
13 Court.

14 Now if you're calling into question the validity
15 of that affidavit, then I request, I request, okay, that
16 you give us an opportunity to correct that and have this
17 numbered, okay, and have him resign the affidavit, but to
18 make a decision on the merits based upon the fact that
19 you're calling into question my client's signature on an
20 affidavit which is notarized, I have a problem with that,
21 Your Honor.

22 THE COURT: I have no problem.

23 MR. ITKOWITZ: That's wrong.

24 THE COURT: You know what, sir, I'm going to be
25 kind enough to allow you but let me tell you something.
26 You cannot no person can sign an affidavit that doesn't

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2 have any relation to anything else that is said before. An
3 affidavit, yes, what happened is exactly true. You
4 prepared the affidavit. You sent it to your clients, said
5 sign this and the person signed it on the blank page.

6 MR. ITKOWITZ: That's not how an affidavit gets
7 prepared. An affidavit gets prepared by the lawyer
8 speaking to the client, writing it up, okay, and then
9 submitting it and then they sign.

10 THE COURT: The only thing I have before me is
11 that Mr. Danzer got a communication from you ALM's
12 Unlimited Incorporated attorney saying you better sign
13 this, its very important that you sign it and he signed it
14 on a blank piece of paper. Whether or not he read anything
15 else, all right, in this affidavit and attest to it is
16 something I don't know.

17 MR. ITKOWITZ: You can say that about any
18 affidavit.

19 THE COURT: No.

20 MR. ITKOWITZ: Whether --

21 THE COURT: No.

22 MR. ITKOWITZ: Whether the Court can conclude
23 that somebody read an affidavit that they signed, you can
24 call that into question every time there's an affidavit.
25 You know what this court system will stop on that basis.
26 This court system will stop. Nothing will ever get decided

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2 on motions and sworn statements because under that scenario
3 every single sworn statement can be called into question,
4 every single sworn statement because now its not just the
5 person's signature. Its not just the notary. The judge
6 has to be convinced that the person actually read the
7 affidavit before they signed it.

8 THE COURT: Let me put it to you this way, I have
9 to be convinced that the affidavit is not to a different
10 issue, not to a different series of statements. I don't
11 know what was said before. Its on a blank piece of paper.
12 It has no reference to anything.

13 MR. ITKOWITZ: I am telling you as an officer of
14 the court --

15 THE COURT: You don't know that.

16 MR. ITKOWITZ: I do know.

17 THE COURT: Were you there when he signed the
18 affidavit, sir?

19 MR. ITKOWITZ: I was not there --

20 THE COURT: Good.

21 MR. ITKOWITZ: However, if that's what you are
22 saying if that's what your big problem is with this
23 affidavit as opposed to the substance of it I ask this
24 Court for leave to have him come into my office and sign it
25 in front of me and I will have that done and I will
26 transmit that affidavit, but you should not make a ruling

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2 on the merits based upon the fact that this is an
3 unnumbered page. That would be wrong.

4 THE COURT: Its not a question of it being
5 unnumbered. Its a question of being on a blank piece of
6 paper that has no reference to anything that the previous
7 22 paragraphs are under.

8 MR. ITKOWITZ: Like I said, Your Honor, if that
9 is your big concern with this affidavit I ask for leave to
10 submit an affidavit that somebody from my staff, either a
11 notary, an attorney from my staff, will present this to Mr.
12 Danzer, have him resign it in front of them and submit it.
13 I guarantee it there is not going to be one comma changed.
14 I guarantee that.

15 THE COURT: I'm sure it won't be. I'm sure it
16 won't be.

17 MR. ITKOWITZ: Now if Your Honor please, there is
18 one issue and only one issue I ask this Court to address
19 with respect to the previous oral argument. As I am trial
20 counsel and I tried many cases I'm sure Your Honor will
21 appreciate what I have to say.

22 Their whole point in opposition to the summary
23 judgment motion is that Mr. Danzer did not submit an
24 affidavit swearing to the terms of the deal, the deal which
25 is laid out in his e-mails. I would submit to Your Honor
26 that even if my client did sign an affidavit and in light

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2 of Mr. Ross's testimony, there would be a quote unquote
3 factual dispute. So the submission of --

4 THE COURT: So you can't ask for summary
5 judgment.

6 MR. ITKOWITZ: No.

7 THE COURT: You can't have it both ways.

8 MR. ITKOWITZ: There are other reasons we get
9 summary judgment and that's what we need to focus on. The
10 focus is not on whether Mr. Danzer put in an affidavit
11 because if he put in an affidavit Mr. Ross has already
12 stated he's made a statement which is preposterous on its
13 face that I told Mr. Danzer that its not the deal, yet
14 there's much evidence in the record which shows that he did
15 make the deal.

16 THE COURT: Look --

17 MR. GOLDMAN: Are we going back to redoing this
18 all over again with new counsel?

19 THE COURT: Look, the issue is not whether or not
20 there was even an agreement between Mr. Ross and Mr. Danzer
21 that there should be 10 percent paid. The issue is there
22 is nothing in writing to say that anything in perpetuity or
23 in the future or the renewal license or everything else
24 that you are counting on goes forward. There is not an
25 iota of written testimony, written facts here.

26 MR. ITKOWITZ: That's not true, Your Honor.

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THE COURT: Where?

MR. ITKOWITZ: Its not true. Its contained in the written admissions by Trump and Trump's agents ratifying the deal.

When --

THE COURT: Where? I asked that five times already. I've had enough of it. I have another case. Where?

MR. ITKOWITZ: There was a point --

THE COURT: Where?

MR. ITKOWITZ: Its there is Cathy Gloss's deposition testimony. Let's go to that.

THE COURT: That has to do with an agreement between Mr. Ross and Ms. Glosser saying, yes, I did tell him 10 percent. But I am asking you for a writing. I am asking you for something that you can rely on.

MR. ITKOWITZ: Page -- Exhibit 9.

THE COURT: Of yours?

MR. ITKOWITZ: Yes.

THE COURT: Exhibit 9.

MR. ITKOWITZ: This is Cathy Gloss's handwriting. The director of licensing, the vice-president director of licensing.

MR. GOLDMAN: I read this out of --

MR. ITKOWITZ: George made the deal with PVH.

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2 They want neckwear, ask Jeff what percentage. He will let
3 me know. Okay.

4 THE COURT: If you think that that's a contract,
5 then please refer me to a Hornbook that tells me that's a
6 contract.

7 MR. GOLDMAN: That's a telephone note that she
8 had with --

9 MR. ITKOWITZ: Hold on. Exhibit 16. This is
10 Cathy Gloss's handwriting. This is after the deal is made.
11 You have Exhibit 16, Your Honor.

12 THE COURT: Yes, I'm looking at it. Where is the
13 contract?

14 MR. ITKOWITZ: If you look at the bottom e-mail
15 from Jeff Danzer.

16 THE COURT: To Cathy Glosser?

17 MR. ITKOWITZ: Yes, and you have a handwriting
18 that's Cathy Gloss's handwriting. Its uncontested. She
19 got this e-mail and she says wait to hear back from George
20 before processing.

21 MR. GOLDMAN: We --

22 MR. ITKOWITZ: Excuse me. I'm talking. Don't
23 interrupt.

24 MR. GOLDMAN: You are the second attorney
25 talking.

26 MR. ITKOWITZ: I would ask he be directed --

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2 THE COURT: This is now submitted as is. Its the
3 end of the record. Its submitted. You get me the record.
4 You get me the minutes and we will see where we go from
5 here.

6 MR. GOLDMAN: Thank you, Your Honor.

7 MR. ITKOWITZ: Your Honor, if I may one second.
8 Right below that right below that where it says wait to
9 hear back from George, Cathy Glosser writes in her hand
10 George okayed on 7-20-05. That's an admission. That's a
11 legal admission by Cathy Glosser.

12 THE COURT: You as a great attorney when you get
13 to a jury you can maybe convince a jury of the same.

14 MR. GOLDMAN: Thank you, Your Honor.

15 THE COURT: Meantime, frankly, you have not
16 established anything that the Court can rely on.

17 I really should make a decision on the record but
18 I will let the record speak and I will read it once more.

19 MR. ITKOWITZ: If Your Honor is going to deny
20 summary judgment since the Note of Issue was filed I would
21 ask for a trial date as early as convenient.

22 THE COURT: Right. I will have you back for a
23 trial date. What I suggest you do is you go to mediation,
24 try to resolve.

25 MR. ITKOWITZ: No, this is going to be tried,
26 Your Honor.

1
2 THE COURT: Okay. Good.

3 Its submitted I will give it one week to give me
4 the minutes and so I'll put it on for the 21st so that we
5 can have the minutes submitted on the 21st and then it will
6 be submitted as of the date I get the minutes.

7 * * *

8 CERTIFIED THAT THE FOREGOING IS A TRUE AND
9 ACCURATE TRANSCRIPT OF THE STENOGRAPHIC MINUTES IN
10 THESE PROCEEDINGS.

11 _____
12 DENISE WILLIAMS, RPR
13 Official Court Reporter
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